IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

MFA.No. 1061 of 2001(B)

OPMV.5/1991 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALAKKAD
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APPELLANT:
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1. AROGYASWAMY, SON OF PICHAMUTHU,
CHANDRAPURAM, WALAYAR, PUDUSSERY AMSOM,
PALAKKAD DISTRICT.

2. RAJAMANICKAM, W/O.AROGYASWAMY, CHANDRAPURAM
WALAYAR, PUDUSSERY AMSOM, PALAKKAD DISTRICT.

BY ADV. SRI.T.SETHUMADHAVAN

RESPONDENTS:
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1. D.VENKATACHALAM, S/O.DEVANNA GOUNDER
KOUNDENPUDUR, ERODE, TAMIL NADU.
DRIVER OF LORRY NO.TCQ 3663.

2. N.VENKATACHALAM, S/O.NACHUMUTHU GOUNDER
THALACANNAL PUDUR, OLAPALAYAM P.O.,
PERUMTHARAI, TAMIL NADU.

3. NATIONAL INSURANCE CO.LTD., KARTHIKEYA COMPLED,
1ST FLOOR, 403-8-10, METTU MAIN ROAD, BHAVANI-638 302.

BY ADV. SRI.E.M.JOSEPH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 7.1.2007 , THE COURT ON 07/12/2007 DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.1061 OF 20O1

Dated this the 7th day of December, 2007

JUDGMENT

Koshy, J.

Son of the appellants died in a motor accident, when a lorry hit on the motor cycle, driven by the deceased. The Tribunal found that the accident occurred due to the negligence of the driver of the lorry as well as the deceased and fixed apportionment of the negligence as 75% and 25%. In other words, contributory negligence was found on the part of the deceased at 25% and therefore, after assessing compensation, 25% was deducted and balance was awarded. On going through the scene mahazar as well as the evidence, we are of opinion that no interference is needed in the finding of contributory negligence. With regard to the quantum of compensation, it has come out in evidence that he was a head load worker employed in Malabar Cements Ltd., a Kerala State undertaking. Petitioners' claim was that he was getting Rs.2,345.56 per month. But no certificate was produced to that effect. Therefore, the Tribunal has fixed only Rs.1,350/- as monthly income. The fatal injury was occurred to the deceased at the age of 25 and he was an employed person.

Considering the evidence available, we are inclined to agree that he was doing the head load work. The accident occurred in 1990. Considering the wage pattern existed in 1990 in the State and the income of a head load worker, we are of opinion that he would have earned Rs.2,100/- per month. If that be so, loss of dependency has to be taken as Rs.1,400/-. The age of the mother was 55. The Tribunal fixed 8 as the multiplier. We see no reason to interfere with the same. If that be so, compensation amount will be Rs.1,34,400/-. The Tribunal has assessed compensation for loss of dependency at Rs.80,000/-. So, additional compensation assessed is Rs.54,400/-, out of which, 25% has to be deducted. Therefore, additional compensation payable will be Rs.40,800/-. We are of opinion that compensation granted on other heads are just and reasonable. The additional amount of Rs.40,800/- should be deposited by the third respondent Insurance Company with 7.5% interest from the date of application till the date of deposit. On deposit of the above amount, the petitioners are entitled to withdraw the same. The appeal is allowed, partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1061 OF 2001

JUDGMENT

7.12.2007